



January 13, 2016

SENATE BILL No. 257

DIGEST OF SB 257 (Updated January 11, 2016 3:49 pm - DI 55)

Citations Affected: IC 8-1; IC 8-1.5.

Synopsis: Distressed water and wastewater utilities. Specifies that for purposes of the statute governing the acquisition of distressed water or wastewater utilities, a "utility company" includes, in addition to a regional sewer or water district, a: (1) public utility; (2) municipally owned utility; or (3) not-for-profit utility; that provides water or wastewater service. Eliminates a provision under which the IURC was not required to approve a petition by an acquiring utility company under the statute to recover the cost differentials associated with the purchase of a distressed utility unless the IURC found that the distressed utility being acquired: (1) served not more than 3,000 customers; or (2) was nonviable in the absence of the acquisition. Provides that the distressed utility being acquired is not furnishing or maintaining adequate, efficient, safe, and reasonable service and facilities for purposes of the statute if the IURC finds that the distressed utility: (1) is the property of a municipally owned utility serving fewer than 5,000 customers; and (2) is being sold by an agreement between the parties that is subject to IURC approval. Provides that in a proceeding under the statute, the IURC shall issue its final order not later than 210 days after the filing of the petitioner's case in chief. Provides that for purposes of the statute and for sales of nonsurplus municipally owned utility property reached by an agreement between the parties, the IURC's order approving the petition or agreement shall authorize the acquiring utility company or purchaser to record: (1) the full purchase price; (2) incidental expenses; and (3) other costs of

(Continued next page)

Effective: Upon passage.

Charbonneau

January 7, 2016, read first time and referred to Committee on Environmental Affairs.
January 12, 2016, amended, reported favorably — Do Pass.

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acquisition; as the original cost of the utility plant in service assets being acquired, allocated in a reasonable manner among appropriate utility in service accounts. For purposes of the statute governing the sale of nonsurplus municipally owned utility property: (1) provides that the municipal executive, in addition to the municipal legislative body (as provided under current law), may make the determination to sell or otherwise dispose of the property; and (2) replaces the requirement that the legislative body adopt an ordinance to appoint appraisers to appraise the property with the requirement that the legislative body or the municipal executive provide for the appointment of the appraisers in a written document that is subject to public inspection. Does the following in the case of an ordinance adopted after March 28, 2016, for the sale or disposition of nonsurplus municipally owned property: (1) Provides that the sale or disposition must be approved by the IURC. (2) Requires the IURC to approve the sale or disposition according to the terms and conditions proposed by the parties if the IURC finds that the terms and conditions are in the public interest. (3) Sets forth a process that applies to the IURC's determination of whether the proposed sale or disposition is in the public interest. (4) Provides that the purchase price of the nonsurplus municipally owned utility property shall be considered reasonable if it does not exceed the appraised value set forth in the required appraisal. (5) Requires the IURC to issue its final order not later than 210 days after the filing of the parties' case in chief. (6) Eliminates the referendum process with respect to the proposed sale or disposition if the IURC determines that certain factors are satisfied.



January 13, 2016

Second Regular Session 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

SENATE BILL No. 257

A BILL FOR AN ACT to amend the Indiana Code concerning utilities.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 8-1-2-6 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE UPON PASSAGE]: Sec. 6. (a) The commission shall
3 value all property of every public utility actually used and useful for the
4 convenience of the public at its fair value, giving such consideration as
5 it deems appropriate in each case to all bases of valuation which may
6 be presented or which the commission is authorized to consider by the
7 following provisions of this section. As one of the elements in such
8 valuation the commission shall give weight to the reasonable cost of
9 bringing the property to its then state of efficiency. In making such
10 valuation, the commission may avail itself of any information in
11 possession of the department of local government finance or of any
12 local authorities. The commission may accept any valuation of the
13 physical property made by the interstate commerce commission of any
14 public utility subject to the provisions of this act.
15 (b) The lands of such public utility shall not be valued at a greater

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amount than the assessed value of said lands exclusive of improvements as valued for taxation. In making such valuation no account shall be taken of presumptive value resting on natural resources independent of any structures in relation thereto, the natural resource itself shall be viewed as the public's property. No account shall be taken of good will for presumptive values growing out of the operation of any utility as a going concern, all such values to rest with the municipality by reason of the special and exclusive grants given such utility enterprises. **Except in a proceeding under IC 8-1-30, and except as provided in IC 8-1-30.3-5 and IC 8-1.5-2-6.1**, no account shall be taken of construction costs unless such costs were actually incurred and paid as part of the cost entering into the construction of the utility. **Except in a proceeding under IC 8-1-30, and except as provided in IC 8-1-30.3-5 and IC 8-1.5-2-6.1**, all public utility valuations shall be based upon tangible property, that is, such property as has value by reason of construction costs, either in materials purchased or in assembling of materials into structures by the labor or (of) workers and the services of superintendents, including engineers, legal and court costs, accounting systems and transportation costs, and also including insurance and interest charges on capital accounts during the construction period. As an element in determining value the commission may also take into account reproduction costs at current prices, less depreciation, based on the items set forth in the last sentence hereof and shall not include good will, going value, or natural resources.

(c) In determining the amount of allowable operating expenses of a utility, the commission may not take into consideration or approve any expense for institutional or image building advertising, charitable contributions, or political contributions.

SECTION 2. IC 8-1-30.3-2.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 2.5. As used in this chapter, "not-for-profit utility" has the meaning set forth in IC 8-1-2-125(a). The term includes a utility company owned, operated, or held in trust by a consolidated city.**

SECTION 3. IC 8-1-30.3-3, AS ADDED BY P.L.189-2015, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 3. As used in this chapter, "utility company" means:**

(1) a:

(A) public utility; (as defined in IC 8-1-31-7) that provides water or wastewater service; or



- 1 **(B) municipally owned utility; or**
 2 **(C) not-for-profit utility;**
 3 **that provides water or wastewater service; or**
 4 (2) a regional sewer or water district.

5 SECTION 4. IC 8-1-30.3-5, AS ADDED BY P.L.189-2015,
 6 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 7 UPON PASSAGE]: Sec. 5. (a) This section applies if:

- 8 (1) a utility company acquires property from another utility
 9 company at a cost differential **in a transaction involving a**
 10 **willing buyer and a willing seller; and**
 11 (2) at least one (1) utility company described in subdivision (1) is
 12 subject to the jurisdiction of the commission under this article.

13 (b) There is a rebuttable presumption that a cost differential is
 14 reasonable.

15 (c) The utility company that acquires the utility property may
 16 petition the commission to include the cost differentials as part of its
 17 rate base. The commission shall approve the petition if the commission
 18 finds the following:

- 19 (1) The utility property is used and useful in providing water
 20 service, wastewater service, or both water and wastewater service.

21 ~~(2) The distressed utility:~~

22 ~~(A) served not more than three thousand (3,000) customers; or~~

23 ~~(B) was nonviable in the absence of the acquisition.~~

24 ~~(3)~~ (2) The distressed utility failed to furnish or maintain
 25 adequate, efficient, safe, and reasonable service and facilities.

26 ~~(4)~~ (3) The utility company will make reasonable and prudent
 27 improvements to ensure that customers of the distressed utility
 28 will receive adequate, efficient, safe, and reasonable service.

29 ~~(5)~~ (4) The acquisition of the utility property is the result of a
 30 mutual agreement made at arms length.

31 ~~(6)~~ (5) The actual purchase price of the utility property is
 32 reasonable.

33 ~~(7)~~ (6) The utility company and the distressed utility are not
 34 affiliated and share no ownership interests.

35 ~~(8)~~ (7) The rates charged by the utility company before acquiring
 36 the utility property of the distressed utility will not increase
 37 unreasonably as a result of acquiring the utility property.

38 ~~(9)~~ (8) The cost differential will be added to the utility company's
 39 rate base to be amortized as an addition to expense over a
 40 reasonable time with corresponding reductions in the rate base.

41 (d) A utility company may petition the commission in an
 42 independent proceeding to approve a petition under subsection (c)



before the utility company acquires the utility property if the utility company provides:

- (1) notice of the proposed acquisition and any changes in rates or charges to customers of the distressed utility;
- (2) notice to customers of the utility company if the proposed acquisition will increase the utility company's rates by an amount that is greater than one percent (1%) of the utility company's base annual revenue;
- (3) notice to the office of the utility consumer counselor; and
- (4) a plan for reasonable and prudent improvements to provide adequate, efficient, safe, and reasonable service to customers of the distressed utility.

(e) In a proceeding under subsection (d), the commission shall issue its final order not later than two hundred ten (210) days after the filing of the petitioner's case in chief. If the commission grants the petition, the commission's order shall authorize the acquiring utility company to make accounting entries recording the acquisition and that reflect:

- (1) the full purchase price;**
- (2) incidental expenses; and**
- (3) other costs of acquisition;**

as the original cost of the utility plant in service assets being acquired, allocated in a reasonable manner among appropriate utility plant in service accounts.

SECTION 5. IC 8-1-30.3-6, AS ADDED BY P.L.189-2015, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. For purposes of section ~~5(c)(3)~~ **5(c)(2)** of this chapter, a distressed utility is not furnishing or maintaining adequate, efficient, safe, and reasonable service and facilities if the commission finds one (1) or more of the following:

- (1) The distressed utility violated one (1) or more state or federal statutory or regulatory requirements ~~concerning in a manner that the commission determines affects~~ the safety, adequacy, efficiency, or reasonableness of its services or facilities.
- (2) The distressed utility has inadequate financial, managerial, or technical ability or expertise.
- (3) The distressed utility fails to provide water in sufficient amounts, that is palatable, or at adequate volume or pressure.
- (4) The distressed utility, due to necessary improvements to its plant or distribution or collection system or operations, is unable to furnish and maintain adequate service to its customers at rates equal to or less than those of the public utility.



(5) The distressed utility:

(A) is municipally owned utility property of a municipally owned utility that serves fewer than five thousand (5,000) customers; and

(B) is being sold under IC 8-1.5-2-6.1.

~~(5)~~ (6) Any other facts that the commission determines demonstrate the distressed utility's inability to furnish or maintain adequate, efficient, safe, or reasonable service or facilities.

SECTION 6. IC 8-1.5-1-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10. "Utility", "municipally owned utility", and "public utility" have the meanings set forth in IC 8-1-2-1. **However, notwithstanding IC 8-1-2-1(g), for purposes of IC 8-1.5-2-4 through IC 8-1.5-2-6.1, the term:**

(1) "utility" includes any plant or equipment that is:

(A) used within Indiana for the collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, night soil, and industrial waste; and

(B) acquired, owned, or operated by a municipality described in subdivision (2); and

(2) "municipally owned utility" includes a municipality that acquires, owns, or operates facilities for the collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, night soil, and industrial waste.

SECTION 7. IC 8-1.5-2-4, AS AMENDED BY P.L.68-2015, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. Whenever the municipal legislative body **or the municipal executive** determines to sell or otherwise dispose of nonsurplus municipally owned utility property, it shall ~~by ordinance or resolution~~ **provide for the following in a written document that shall be made available for inspection and copying at the offices of the municipality's municipally owned utility in accordance with IC 5-14-3.**

(1) The appointment, as follows, of three (3) residents of Indiana to serve as appraisers:

(A) One (1) disinterested person who is an engineer licensed under IC 25-31-1.

(B) One (1) disinterested appraiser licensed under IC 25-34.1.

(C) One disinterested person who is either:

(i) an engineer licensed under IC 25-31-1; or

(ii) an appraiser licensed under IC 25-34.1.

(2) The appraisal of the property.



(3) The time that the appraisal is due.

SECTION 8. IC 8-1.5-2-5, AS AMENDED BY THE TECHNICAL CORRECTIONS BILL OF THE 2016 GENERAL ASSEMBLY, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) Each appraiser appointed as provided by section 4 of this chapter must:

(1) by education and experience, have such expert and technical knowledge and qualifications as to make a proper appraisal and valuation of the property of the type and nature involved in the sale;

(2) be a disinterested person; and

(3) not be a resident or taxpayer of the municipality.

(b) The appraisers shall:

(1) be sworn to make a just and true valuation of the property; and

(2) return their appraisal, in writing, to the:

(A) municipal legislative body; or

(B) **municipal executive;**

that appointed them within the time fixed by in the ordinance or resolution written document appointing them under section 4 of this chapter.

(c) If all three (3) appraisers cannot agree as to the appraised value, the appraisal, when signed by two (2) of the appraisers, constitutes a good and valid appraisal.

(d) If, after the return of the appraisal by the appraisers, ~~to the legislative body~~, the legislative body ~~decides and the municipal executive decide~~ to proceed with the sale or disposition of the nonsurplus municipally owned utility property, the legislative body shall, not earlier than the thirty (30) day period described in subsection (e) and not later than ninety (90) days after the return of the appraisal, hold a public hearing to do the following:

(1) Review and explain the appraisal.

(2) Receive public comment on the proposed sale or disposition of the nonsurplus municipally owned utility property.

Not less than thirty (30) days or more than sixty (60) days after the date of a hearing under this section, the legislative body may adopt an ordinance providing for the sale or disposition of the nonsurplus municipally owned utility property, subject to subsections (f) and (g) **and, in the case of an ordinance adopted under this subsection after March 28, 2016, subject to section 6.1 of this chapter.** The legislative body is not required to adopt an ordinance providing for the sale or disposition of the nonsurplus municipally owned utility property if, after the hearing, the legislative body determines it is not in the



1 interest of the municipality to proceed with the sale or disposition.
 2 Notice of a hearing under this section shall be published in the manner
 3 prescribed by IC 5-3-1.

4 (e) The hearing on the proposed sale or disposition of the
 5 nonsurplus municipally owned utility property may not be held less
 6 than thirty (30) days after notice of the hearing is given as required by
 7 subsection (d).

8 (f) Subject to subsection (j), an ordinance adopted under subsection
 9 (d) does not take effect until the ~~later~~ **latest** of the following:

10 (1) The expiration of the thirty (30) day period described in
 11 subsection (g), if the ~~required number of registered voters set~~
 12 ~~forth in subsection (h) do not sign and present a petition to the~~
 13 ~~legislative body opposing the sale or disposition within the thirty~~
 14 ~~(30) day period described in question as to whether the sale or~~
 15 **disposition should be made is not submitted to the voters of**
 16 **the municipality under subsection (g).**

17 (2) If:

18 (A) the question as to whether the sale or disposition shall
 19 be made is submitted to the voters of the municipality
 20 under subsection (g); and

21 (B) a majority of the voters voting on the question vote for
 22 the sale or disposition;

23 **at such time that the vote is determined to be final.**

24 (2) (3) The effective date specified by the legislative body in the
 25 ordinance.

26 (g) **Subject to subsection (m) and to section 6.1 of this chapter**
 27 **in the case of an ordinance adopted under subsection (d) after**
 28 **March 28, 2016, if:**

29 (1) the legislative body adopts an ordinance under subsection (d);
 30 and

31 (2) not later than thirty (30) days after the date the ordinance is
 32 adopted at least the number of the registered voters of the
 33 municipality set forth in subsection (h) sign and present a petition
 34 to the legislative body opposing the sale or disposition;

35 the legislative body shall submit the question as to whether the sale or
 36 disposition shall be made to the voters of the municipality at a special
 37 or general election. In submitting the public question to the voters, the
 38 legislative body shall certify within the time set forth in IC 3-10-9-3, if
 39 applicable, the question to the county election board of the county
 40 containing the greatest percentage of population of the municipality.
 41 The county election board shall adopt a resolution setting forth the text
 42 of the public question and shall submit the question as to whether the



1 sale or disposition shall be made to the voters of the municipality at a
 2 special or general election on a date specified by the municipal
 3 legislative body. Pending the results of an election under this
 4 subsection, the municipality may not take further action to sell or
 5 dispose of the property as provided in the ordinance.

6 (h) **Subject to subsection (m) and to section 6.1 of this chapter**
 7 **in the case of an ordinance adopted under subsection (d) after**
 8 **March 28, 2016**, the number of signatures required on a petition
 9 opposing the sale or disposition under subsection (g) is as follows:

10 (1) In a municipality with not more than one thousand (1,000)
 11 registered voters, thirty percent (30%) of the registered voters.

12 (2) In a municipality with at least one thousand one (1,001)
 13 registered voters and not more than five thousand (5,000)
 14 registered voters, fifteen percent (15%) of the registered voters.

15 (3) In a municipality with at least five thousand one (5,001)
 16 registered voters and not more than twenty-five thousand (25,000)
 17 registered voters, ten percent (10%) of the registered voters.

18 (4) In a municipality with at least twenty-five thousand one
 19 (25,001) registered voters, five percent (5%) of the registered
 20 voters.

21 (i) If a majority of the voters voting on the question vote for the sale
 22 or disposition, the legislative body shall proceed to sell or dispose of
 23 the property as provided in the ordinance, **subject to subsection (m)**
 24 **and to section 6.1 of this chapter in the case of an ordinance**
 25 **adopted under subsection (d) after March 28, 2016.**

26 (j) If a majority of the voters voting on the question vote against the
 27 sale or disposition, the ordinance adopted under subsection (d) does not
 28 take effect and the sale or disposition may not be made, **subject to**
 29 **subsection (m) and to section 6.1 of this chapter in the case of an**
 30 **ordinance adopted under subsection (d) after March 28, 2016.**

31 (k) If:

32 (1) the legislative body adopts an ordinance under subsection (d);
 33 and

34 (2) after the expiration of the thirty (30) day period described in
 35 subsection (g), a petition is not filed;

36 the municipal legislative body may proceed to sell the property as
 37 provided in the ordinance, **subject to subsection (m) and to section**
 38 **6.1 of this chapter in the case of an ordinance adopted under**
 39 **subsection (d) after March 28, 2016.**

40 (l) Notwithstanding the procedures set forth in this section, if: ~~a~~
 41 ~~municipality~~:

42 (1) before July 1, 2015, **a municipality** adopts an ordinance under



1 this section for the sale or disposition of nonsurplus municipally
 2 owned utility property in accordance with the procedures set forth
 3 in this section before its amendment on July 1, 2015; and

4 (2) the ordinance adopted takes effect before July 1, 2015, in
 5 accordance with the procedures set forth in this section before its
 6 amendment on July 1, 2015;

7 the ordinance is not subject to challenge under subsection (g) after June
 8 30, 2015, regardless of whether the thirty (30) day period described in
 9 subsection (g) expires after June 30, 2015. An ordinance described in
 10 this subsection is effective for all purposes and is legalized and
 11 validated.

12 **(m) Subsections (g) through (k) do not apply to an ordinance**
 13 **adopted under subsection (d) after March 28, 2016, if the**
 14 **commission determines, in reviewing the proposed sale or**
 15 **disposition under section 6.1 of this chapter, that the factors set**
 16 **forth in IC 8-1-30.3-5(c) are satisfied as applied to the proposed**
 17 **sale or disposition.**

18 SECTION 9. IC 8-1.5-2-6, AS AMENDED BY P.L.103-2008,
 19 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 20 UPON PASSAGE]: Sec. 6. (a) The ordinance adopted by the municipal
 21 legislative body under section 5(d) of this chapter must provide for:

22 (1) the sale or disposition of the municipally owned utility
 23 property;

24 (2) the manner of the sale or disposition;

25 (3) the price, terms, and conditions of the sale or disposition,
 26 which must be consistent with any contractual obligations
 27 previously incurred under IC 8-1-2.2; and

28 (4) the officer or officers who are to execute the proper
 29 documents conveying title on behalf of the municipality.

30 **(b) Except as provided in subsection (e), the property may not be**
 31 **sold for less than its full appraised value, as set forth in the appraisal,**
 32 **less the amount of any bonds, liens, or other indebtedness due upon the**
 33 **property, and only in accordance with contractual obligations incurred**
 34 **under IC 8-1-2.2. The indebtedness shall either:**

35 (1) be paid in accordance with the terms and conditions of the
 36 instruments governing the indebtedness before the sale; or

37 (2) be assumed and paid by the purchaser as part of the purchase
 38 price of the property.

39 (c) This subsection applies if a municipal legislative body adopts an
 40 ordinance for the sale or disposition of municipally owned utility real
 41 property by acceptance of bids. A bid submitted by a trust (as defined
 42 in IC 30-4-1-1(a)) must identify each:



1 (1) beneficiary of the trust; and

2 (2) settlor empowered to revoke or modify the trust.

3 (d) The proceeds of any sale under this chapter shall be paid into the
4 treasury of the municipality making the sale and become part of the
5 general fund, **unless the municipal legislative body adopts an**
6 **ordinance to provide that the proceeds of the sale shall be paid into**
7 **a restricted fund to be used only in the manner set forth in the**
8 **ordinance.**

9 (e) The municipally owned utility property that is the subject of
10 an ordinance adopted under section 5(d) of this chapter may be
11 sold for less than its full appraised value, as set forth in the
12 appraisal, if the municipal legislative body determines that it would
13 be in the municipality's best interests to sell the property for less
14 than its full appraised value so as to result in lower utility rates to
15 be charged by the prospective purchaser to customers of the
16 municipality's municipally owned utility.

17 SECTION 10. IC 8-1.5-2-6.1 IS ADDED TO THE INDIANA
18 CODE AS A NEW SECTION TO READ AS FOLLOWS
19 [EFFECTIVE UPON PASSAGE]: **Sec. 6.1. (a) This section applies to**
20 **a municipality that adopts an ordinance under section 5(d) of this**
21 **chapter after March 28, 2016.**

22 (b) Before a municipality may proceed to sell or otherwise
23 dispose of all or part of its nonsurplus utility property under an
24 ordinance adopted under section 5(d) of this chapter, the
25 municipality and the prospective purchaser must obtain the
26 approval of the commission under this section.

27 (c) As part of the sale or disposition of the property, the
28 municipality and the prospective purchaser may include terms and
29 conditions that the municipality and the prospective purchaser
30 consider to be equitable to the existing utility customers of:

31 (1) the municipality's municipally owned utility; and

32 (2) the prospective purchaser;

33 as applicable.

34 (d) The commission shall approve the sale or disposition of the
35 property according to the terms and conditions proposed by the
36 municipality and the prospective purchaser if the commission finds
37 that the sale or disposition according to the terms and conditions
38 proposed is in the public interest. For purposes of this section, the
39 purchase price of the municipality's nonsurplus utility property
40 shall be considered reasonable if it does not exceed the appraised
41 value set forth in the appraisal required under section 5 of this
42 chapter.



(e) The following apply to the commission's determination under subsection (d) as to whether the proposed sale or disposition according to the proposed terms and conditions is in the public interest:

(1) If:

(A) the municipality's municipally owned utility serves fewer than five thousand (5,000) customers, as set forth in IC 8-1-30.3-6(5); or

(B) the municipality's municipally owned utility otherwise satisfies one (1) or more of the factors set forth in IC 8-1-30.3-6;

the commission shall proceed to review the proposed sale or disposition under IC 8-1-30.3-5.

(2) Subject to subsection (h), if the municipality's municipally owned utility does not satisfy any of the factors set forth in IC 8-1-30.3-6, the commission shall consider the extent to which the proposed terms and conditions of the proposed sale or disposition would require the existing utility customers of either the prospective purchaser or the municipality's municipally owned utility, as applicable, to pay rates that would subsidize utility service to the other party's existing customers. If the commission determines that:

(A) the proposed terms and conditions would result in a subsidy described in this subdivision; and

(B) the subsidy would cause the proposed terms and conditions of the proposed sale or disposition not to be in the public interest;

the commission shall calculate the amount of the subsidy that would result and shall set forth in an order under this section such changes to the proposed terms and conditions as the commission considers appropriate to address the subsidy. The prospective purchaser and the municipality shall each have thirty (30) days from the date of the commission's order setting forth the commission's changes to either accept or reject the changes. If either party rejects the commission's changes, the proposed sale or disposition is considered not to be in the public interest.

(3) In reviewing the proposed terms and conditions of the proposed sale or disposition under either subdivision (1) or (2), the commission shall consider the financial, managerial, and technical ability of the prospective purchaser to provide the utility service required after the proposed sale or



disposition.

(f) As part of an order approving a sale or disposition of property under this section, the commission shall, without regard to amounts that may be recorded on the books and records of the municipality and without regard to any grants or contributions previously received by the municipality, provide that for ratemaking purposes, the prospective purchaser shall record as the net original cost rate base an amount equal to:

- (1) the full purchase price;
- (2) incidental expenses; and
- (3) other costs of acquisition;

allocated in a reasonable manner among appropriate utility plant in service accounts.

(g) The commission shall issue a final order under this section not later than two hundred ten (210) days after the filing of the parties' case in chief.

(h) In reviewing a proposed sale or disposition under subsection (e), the commission shall determine whether the factors set forth in IC 8-1-30.3-5(c) are satisfied as applied to the proposed sale or disposition of the municipality's nonsurplus municipally owned utility property for purposes of section 5(m) of this chapter. If the commission determines that the factors set forth in IC 8-1-30.3-5(c):

- (1) are satisfied as applied to the proposed sale or disposition, section 5(g) through 5(k) of this chapter does not apply to the municipality's ordinance adopted under section 5(d) of this chapter; or
- (2) are not satisfied as applied to the proposed sale or disposition:

(A) section 5(g) through 5(k) of this chapter applies to the municipality's ordinance adopted under section 5(d) of this chapter; and

(B) the question as to whether the sale or disposition should be made must be submitted to the voters of the municipality at a special or general election if at least the number of the registered voters of the municipality set forth in section 5(h) of this chapter sign and present a petition to the legislative body opposing the sale or disposition, in accordance with section 5(g) through 5(k) of this chapter.

However, notwithstanding this subsection, in reviewing a proposed sale or disposition under subsection (e)(2), the commission may not



1 **condition its approval of the proposed sale or disposition on**
2 **whether the factors set forth in IC 8-1-30.3-5(c) are satisfied or on**
3 **any other factors except those provided for in subsection (e)(2) and**
4 **(e)(3).**

5 **SECTION 11. An emergency is declared for this act.**



COMMITTEE REPORT

Madam President: The Senate Committee on Environmental Affairs, to which was referred Senate Bill No. 257, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 3, line 9, delete "differential;" and insert "**differential in a transaction involving a willing buyer and a willing seller;**".

Page 4, line 13, delete "one hundred twenty (120)" and insert "**two hundred ten (210)**".

Page 4, line 31, strike "concerning" and insert "**in a manner that the commission determines affects**".

Page 11, line 28, delete "a proposed" and insert "**an**".

Page 11, line 33, delete "proposed order" and insert "**order**".

Page 11, line 33, after "commission's" delete "proposed".

Page 11, line 35, after "commission's" delete "proposed".

Page 11, line 36, after "interest" insert ".".

Page 11, delete lines 37 through 39.

Page 12, line 17, delete "one hundred twenty (120)" and insert "**two hundred ten (210)**".

and when so amended that said bill do pass.

(Reference is to SB 257 as introduced.)

CHARBONNEAU, Chairperson

Committee Vote: Yeas 9, Nays 0.

